

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to)
Continue Cost Recovery Mechanism for) Case No. 14-1580-EL-RDR
Energy Efficiency Programs Through)
2016.)

**REPLY BRIEF
Of
PEOPLE WORKING COOPERATIVELY, INC.**

I. Introduction

People Working Cooperatively, Incorporated (“PWC”) respectfully submits this reply brief in support of the Application of Duke Energy Ohio, Incorporated (“Duke” or “Company”), for approval to continue its cost recovery mechanism (“Application”) for the final year of its Energy Efficiency and Peak Demand Reduction (“EE/PDR”) Plan.¹ On August 21, 2015, several parties submitted initial briefs in this case, including PWC, pursuant to the briefing schedule set forth by the Attorney-Examiners.²

Some parties are mistakenly interpreting Duke’s Application for cost-recovery as an “amendment,” in order to invoke certain provisions of Senate Bill 310. However, a review of this legislation does not support such an outcome.

In its initial brief, PWC noted that cost-recovery is a necessary element for Duke to continue the administration of its effective EE/PDR plan, and therefore, should not be

¹ Duke’s EE/PDR Plan was approved in Case No. 13-431; *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak-Demand Reduction Portfolio Programs*, Opinion and Order at 14 (Dec. 4, 2013).

² July 7, 2015, Hearing Transcript at page 207, lines 20-21 (docketed July 20, 2015).

interpreted an “amendment.” The Commission’s consideration and approval of Duke’s Application for cost-recovery is correctly interpreted as an “action necessary to administer the implementation of an existing portfolio [plan].” Further, it is in accord with existing law and Commission rules that were unchanged or in fact re-affirmed in the language of SB 310. Therefore, for the reasons stated below, PWC urges the Commission to approve Duke’s Application as filed, in order to facilitate the continuing administration of Duke’s existing and successful portfolio plan through its expiration in December of 2016.

II. Law and Argument

A. Duke’s Application for Cost Recovery is not an Amendment.

The attempt to mistakenly label Duke’s Application as an amendment is a good illustration of the old adage that “wishing does not make it so.” The argument appears to be that Duke is “amending” its plan merely because it is asking for an extension of existing cost recovery, including incentives.³ The Commission should reject any such argument because it is not supported by Senate Bill 310 (“SB310”). While SB310 does not define “amendment” it does define a “portfolio plan.” This definition separates required plan elements from any cost recovery through its deference to Commission Rules.

In Senate Bill 310, several changes were made to Ohio Revised Code 4928.66, which governs required energy efficiency efforts of Ohio’s investor-owned electric distribution utilities (“EDUs”). But many statutory provisions remained unchanged, including the language contemplating that utilities may establish “any mechanism

³ Industrial Energy Users – Ohio (“IEU”), Initial Brief at 3 (August 21, 2015); Ohio Manufacturer’s Association (“OMA”) Initial Brief at 2 (August 21, 2015).

designed to recover the cost of energy efficiency”⁴ and that the Commission will adopt rules governing the process.⁵ A relevant addition to the Statute, as a part of SB310, includes the definition of “Portfolio Plan” in R.C. 4928.6610. The new addition states that a portfolio plan is “the comprehensive energy efficiency [...] plan **required** under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code.”⁶ Uncodified Section 5 adopts this definition for the purposes of interpreting Uncodified Sections 6 and 7.⁷

Thus, SB 310 is stating that a portfolio plan is defined (and governed by) a description of what is *required* by the Commission within its rules. Chapter 4901:1-39 presents a clear distinction between the required elements of a portfolio plan and any proposed cost recovery for that plan. This distinction undermines the arguments by IEU and OMA that a request for comprehensive cost recovery is an amendment.

Section 4901:1-39-04 of the Ohio Administrative Code lists the items *required*, per SB310, to be included as a part of an EDU’s EE/PDR plan. While several of these *required* components deal with cost, including a demonstration that an individual program is “cost-effective,”⁸ providing an estimate of “participant costs”⁹ and requiring program budgets,¹⁰ cost recovery for portfolio program expenditures is not included in this Section. That is because cost recovery is not an element required by the Commission as a part of the “comprehensive energy efficiency [...] plan.”

⁴ R.C. 4928.66(A)(2)(c).

⁵ R.C. 4928.66(B).

⁶ (Emphasis Added) R.C. 4928.6610(C).

⁷ Uncodified Section 5 states: “As used in Sections 6, 7, 8, 9, 10, and 11 of this act: “Customer,” “energy intensity,” and “portfolio plan” have the same meanings as in section 4928.6610 of the Revised Code.”

⁸ Ohio Adm. Code 4901:1-39-04(B).

⁹ Ohio Adm. Code 4901:1-39-04(C)(5)(j).

¹⁰ Ohio Adm. Code 4901:1-39-04(C)(5)(i).

Cost recovery is governed by Section 4901:1-39-07 of the Commission's rules – separate and distinct from the Section listing elements *required* by the Commission. It is an optional application, separate from the *required* elements of a portfolio plan:

With the filing of its proposed program portfolio plan, the electric utility **may submit a request for recovery of** an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due to electric utility peak-demand reduction, demand response, **energy efficiency program costs, appropriate lost distribution revenues, and shared savings.** Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.¹¹

Thus, any request for cost recovery is separate and apart from the portfolio plan itself, as required by the Commission and acknowledged by SB310. The Commission's rules obviously contemplated cost recovery as being a separate issue, apart and distinct from the portfolio plan itself. For the *required* portfolio plan, a hearing is required prior to Commission approval.¹² For the optional application for cost recovery, a hearing may be scheduled.¹³

In this case, Duke complied with the SB310 and Commission Rules. The Company has not requested to amend their portfolio plan, as defined in SB310. They have filed a separate and distinct application for cost recovery, which isn't prohibited by SB310 (which clearly defers to Commission rules to determine what may constitute an amendment). Therefore no amendment, as contemplated by SB310, has been requested. Nor does this cost recovery Application trigger any provision of SB310. The Commission is allowed to take "actions necessary to administer the implementation of existing

¹¹ (Emphasis Added). Ohio Adm. Code 4901:1-39-07(A).

¹² Ohio Adm. Code 4901:1-39-04(E).

¹³ Ohio Adm. Code 4901:1-39-07(B).

portfolio plans.”¹⁴ Thus, the cost recovery Application by Duke may be considered by the Commission as express in its rules and unaffected by SB310.

The hearing in this proceeding revealed no issue prohibiting the Commission from approving Duke’s cost recovery request for the final year of its existing, approved and non-amended portfolio plan.¹⁵ PWC urges the Commission to approve this filing and allow Duke to continue providing efficient and effective programs that benefit all customers.

B. The Commission should Approve Duke’s Application for Cost Recovery Which Appropriately Includes a Shared Savings Mechanism.

PWC disagrees with parties suggesting that incentive cost recovery is improper or unnecessary or that modification is required.¹⁶ As noted above, the Ohio Administrative Code specifically states that a recovery mechanism for energy efficiency programs may include shared savings.¹⁷ Duke has successfully integrated its shared savings incentive mechanism into its cost recovery rider. No modifications should be made at this time for the final year of Duke’s portfolio. At the time Duke files a new plan for 2017 and beyond, modifications to the corresponding, proposed recovery mechanism may be suggested and considered at that time.

PWC disagrees with the Consumer’s Counsel that Duke’s incentive levels are “exorbitant relative to other Ohio utilities.”¹⁸ This is an unfair comparison that does not

¹⁴ Uncodified SB310 Section 7(B).

¹⁵ PWC is in agreement with Ohio Energy Group (“OEG”) that “Duke is permitted to recover 100% of the costs of EE/PDR programs designed to satisfy [the applicable law] as well as lost distribution revenues.” (OEG Initial Brief at 2 (August 21, 2015)).

¹⁶ See, for example, Kroger Initial Brief at page 4,

¹⁷ See page 4, *Supra*.

¹⁸ OCC Initial Brief at 9 (August 21, 2015).

take into account other factors such as program effectiveness, territorial system benefits, experience level of those administering and reviewing the programs and the types of programs offered. PWC agrees with Duke that no other intervenor provided evidence demonstrating that Duke's earnings were "exorbitant" or "excessive,"¹⁹ given the different set of offerings, circumstances and individual results of each of the Ohio EDUs' EE/PDR Portfolios. Before the Commission would deny revenue to a Company that is an industry-standard component and expressly allowed by the Ohio Administrative Code, an analysis should be undertaken and completed that provides a realistic, well-supported and thoughtful comparison.

III. Conclusion

As stated in PWC's initial brief, Duke Energy of Ohio is an experienced administrator of effective Energy Efficiency and Peak Demand Reduction Programs. All customer classes benefit from Duke's efforts, which have achieved savings over and above what is required by law. The cost recovery mechanism, including the shared savings mechanism, should be continued, in order for customers to continue to receive these benefits in Duke's service territory. For the reasons stated above, People Working Cooperatively, Incorporated, recommends that Duke's Application in this case be approved.

¹⁹ Duke Initial Brief, pages 8-11 (August 21, 2015).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of People Working Cooperatively's *Reply Brief* served on the persons stated below *via* electronic transmission, this 8th day of September, 2015.

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